

Racing Legislation Amendment Act 2019 No 12

[2019-12]



New South Wales

Status Information

Currency of version

Repealed version for 2 January 2020 to 1 February 2020 (accessed 15 November 2024 at 23:14)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

This Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 2.2.2020.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 2 February 2020

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New South Wales

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Racing Legislation Amendment Act 2019 No 12



New South Wales

An Act to make miscellaneous amendments to various Acts and an instrument that relate to racing and associated matters.

1 Name of Act

This Act is the *Racing Legislation Amendment Act 2019*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedules 5 and 6 commence on the date of assent to this Act.

Schedule 1 Amendment of **Harness Racing Act 2009 No 20**

[1] (Repealed)

[2] Part 3, Division 4

Insert after Division 3—

Division 4 Special inquiries

27A Definitions

In this Division—

compulsion order and **compulsion powers** have the same meanings as in section 27C.

information includes a document or thing that contains information.

provide information includes answering a question.

special inquiry means a special inquiry established under section 27B.

threat to harness racing means a threat to—

- (a) the integrity of harness racing, or
- (b) public confidence in the conduct of harness racing.

27B Special inquiry

- (1) HRNSW may, when conducting an inquiry, decide to treat the inquiry as a special inquiry if HRNSW is reasonably satisfied that the inquiry raises a threat to harness racing.
- (2) If a person attending a hearing of a special inquiry is attending because of a compulsion order—
 - (a) the person is entitled to be represented by an Australian legal practitioner, and
 - (b) the person presiding at the hearing is to be assisted by an Australian legal practitioner who has been practising in the State for at least 7 years, and
 - (c) the Australian legal practitioner assisting the person presiding must explain to the person the subject of the compulsion order—
 - (i) the effect of the compulsion powers specified in the order, and
 - (ii) the effect of section 27E.
- (3) The rules may make further provision for the conduct of a special inquiry, including the procedures to be followed at a hearing of the special inquiry.
- (4) Nothing in this section limits the power of HRNSW to otherwise inquire into any matter.

27C Compulsion orders

- (1) HRNSW may apply to the Supreme Court for an order (a **compulsion order**) authorising HRNSW to use the following powers (**compulsion powers**) on a person for the purposes of obtaining information of relevance to a special inquiry (**relevant information**)—
 - (a) the power to order the person to attend a hearing of the special inquiry on the days specified in the order,
 - (b) the power to order the person to provide the relevant information at a hearing,
 - (c) the power to order the person to otherwise provide the relevant information to the special inquiry.
- (2) HRNSW may apply for the compulsion order only if it is reasonably satisfied

that—

- (a) the person has relevant information and the person is unwilling to provide the relevant information to the special inquiry, or
 - (b) the person has relevant information and exceptional circumstances exist that require a compulsion power to be used without first asking the person to voluntarily provide the relevant information.
- (3) For the purposes of subsection (2)(b), exceptional circumstances include circumstances in which there is a very high likelihood that relevant information essential to the special inquiry will be lost.
- (4) The Supreme Court is to decide the application for the compulsion order in the absence of the person and without conducting a hearing unless it is satisfied that the interests of justice require the person to be present.
- (5) The Supreme Court is, when deciding if the interests of justice require the person to be present, to take into account—
- (a) the risk that the relevant information may be lost if the person is given advance notice of the proposed exercise of compulsion powers, and
 - (b) any other matter the Court considers relevant.
- (6) The Supreme Court is, when deciding whether to grant the compulsion order, to take into account the following—
- (a) the nature of the threat to harness racing that the special inquiry is considering,
 - (b) the value to the special inquiry of the relevant information sought,
 - (c) the likelihood the person has the relevant information,
 - (d) the likelihood the person would be unwilling to provide the relevant information,
 - (e) if the application was made on the basis of HRNSW being satisfied that exceptional circumstances exist, the nature of the exceptional circumstances,
 - (f) the harm likely to be caused to the person if the order is granted and the person is required to provide relevant information that may incriminate the person,
 - (g) any other matter the Court considers relevant.
- (7) If the Court decides to grant the compulsion order, it must specify the following

in the order—

- (a) the name of the person the subject of the order,
 - (b) the compulsion powers HRNSW is authorised to use,
 - (c) any limitation to which the use of the compulsion powers is subject,
 - (d) the day on which the order expires.
- (8) The Court must give reasons for its decision to grant or refuse to grant the compulsion order.
- (9) A reference in this section to relevant information being **lost** includes a reference to the relevant information being concealed, altered, destroyed or otherwise being made unavailable to a special inquiry.

27D HRNSW may exercise compulsion powers in accordance with order

- (1) HRNSW may, in accordance with a compulsion order, exercise a compulsion power on the person the subject of the compulsion order.
- (2) Before exercising the compulsion power on the person, HRNSW must inform the person in writing of the following—
- (a) that a compulsion order has been made in relation to the person,
 - (b) what the compulsion power requires the person to do,
 - (c) the reasonable time within which the person must comply with the requirement,
 - (d) the penalty for failing to comply with the requirement.
- (3) A person must not fail to comply with a requirement imposed on the person by the exercise of a compulsion power.

Maximum penalty—100 penalty units or 6 months imprisonment, or both.

27E Provisions relating to requirements to provide information

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Division to provide information unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Division to provide information on the ground that the information might incriminate the person or make the person liable to a penalty.
- (3) **Information not admissible in other proceedings** However, any information

provided by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in disciplinary, civil or criminal proceedings (except for proceedings under this Act).

(4) **Further information** Further information obtained as a result of information provided in compliance with a requirement under this Division is not inadmissible on the ground—

(a) that the information had to be provided, or

(b) that the information might incriminate the person.

27F Review of penalty for offence

(1) The Minister is to review the penalty imposed by section 27D(3) to determine whether the level of the penalty remains valid and appropriate for securing the objectives of this Division.

(2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of that section.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

[3] Section 49 Review of Act

Omit the section.

Schedule 2 Amendment of [Thoroughbred Racing Act 1996 No 37](#)

[1] Part 2A, Divisions 5 and 6

Insert after Division 4—

Division 5 Rules

290 Rules in relation to horse racing

Racing NSW may make rules, not inconsistent with this Act or the regulations, for or with respect to—

(a) the control and regulation of horse racing, or

(b) the exercise of the functions of Racing NSW.

29P Rules generally

(1) A provision of a rule made under this Division may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.
- (2) A rule made under this Division may apply, adopt or incorporate any publication as in force at a particular time or as in force from time to time.
 - (3) A rule made under this Division may not be made for or with respect to any of the matters for or with respect to which regulations may be made by virtue of this Act.
 - (4) Racing NSW may amend or repeal a rule made under this Division.

Division 6 Special inquiries

29Q Definitions

In this Division—

compulsion order and **compulsion powers** have the same meanings as in section 29S.

information includes a document or thing that contains information.

provide information includes answering a question.

special inquiry means a special inquiry established under section 29R.

threat to horse racing means a threat to—

- (a) the integrity of horse racing, or
- (b) public confidence in the conduct of horse racing.

29R Special inquiry

- (1) Racing NSW may, when conducting an inquiry, decide to treat the inquiry as a special inquiry if Racing NSW is reasonably satisfied that the inquiry raises a threat to horse racing.
- (2) If a person attending a hearing of a special inquiry is attending because of a compulsion order—
 - (a) the person is entitled to be represented by an Australian legal practitioner,

and

- (b) the person presiding at the hearing is to be assisted by an Australian legal practitioner who has been practising in the State for at least 7 years, and
 - (c) the Australian legal practitioner assisting the person presiding must explain to the person the subject of the compulsion order—
 - (i) the effect of the compulsion powers specified in the order, and
 - (ii) the effect of section 29U.
- (3) The rules may make further provision for the conduct of a special inquiry, including the procedures to be followed at a hearing of the special inquiry.
- (4) Nothing in this section limits the power of Racing NSW to otherwise inquire into any matter.

29S Compulsion orders

- (1) Racing NSW may apply to the Supreme Court for an order (a **compulsion order**) authorising Racing NSW to use the following powers (**compulsion powers**) on a person for the purposes of obtaining information of relevance to a special inquiry (**relevant information**)—
- (a) the power to order the person to attend a hearing of the special inquiry on the days specified in the order,
 - (b) the power to order the person to provide the relevant information at a hearing,
 - (c) the power to order the person to otherwise provide the relevant information to the special inquiry.
- (2) Racing NSW may apply for the compulsion order only if it is reasonably satisfied that—
- (a) the person has relevant information and the person is unwilling to provide the relevant information to the special inquiry, or
 - (b) the person has relevant information and exceptional circumstances exist that require a compulsion power to be used without first asking the person to voluntarily provide the relevant information.
- (3) For the purposes of subsection (2)(b), exceptional circumstances include circumstances in which there is a very high likelihood that relevant information essential to the special inquiry will be lost.
- (4) The Supreme Court is to decide the application for the compulsion order in the

absence of the person and without conducting a hearing unless it is satisfied that the interests of justice require the person to be present.

- (5) The Supreme Court is, when deciding if the interests of justice require the person to be present, to take into account—
 - (a) the risk that the relevant information may be lost if the person is given advance notice of the proposed exercise of compulsion powers, and
 - (b) any other matter the Court considers relevant.
- (6) The Supreme Court is, when deciding whether to grant the compulsion order, to take into account the following—
 - (a) the nature of the threat to horse racing that the special inquiry is considering,
 - (b) the value to the special inquiry of the relevant information sought,
 - (c) the likelihood the person has the relevant information,
 - (d) the likelihood the person would be unwilling to provide the relevant information,
 - (e) if the application was made on the basis of Racing NSW being satisfied that exceptional circumstances exist, the nature of the exceptional circumstances,
 - (f) the harm likely to be caused to the person if the order is granted and the person is required to provide relevant information that may incriminate the person,
 - (g) any other matter the Court considers relevant.
- (7) If the Court decides to grant the compulsion order, it must specify the following in the order—
 - (a) the name of the person the subject of the order,
 - (b) the compulsion powers Racing NSW is authorised to use,
 - (c) any limitation to which the use of the compulsion powers is subject,
 - (d) the day on which the order expires.
- (8) The Court must give reasons for its decision to grant or refuse to grant the compulsion order.
- (9) A reference in this section to relevant information being **lost** includes a reference to the relevant information being concealed, altered, destroyed or

otherwise being made unavailable to a special inquiry.

29T Racing NSW may exercise compulsion powers in accordance with order

- (1) Racing NSW may, in accordance with a compulsion order, exercise a compulsion power on the person the subject of the compulsion order.
- (2) Before exercising the compulsion power on the person, Racing NSW must inform the person in writing of the following—
 - (a) that a compulsion order has been made in relation to the person,
 - (b) what the compulsion power requires the person to do,
 - (c) the reasonable time within which the person must comply with the requirement,
 - (d) the penalty for failing to comply with the requirement.
- (3) A person must not fail to comply with a requirement imposed on the person by the exercise of a compulsion power.

Maximum penalty—100 penalty units or 6 months imprisonment, or both.

29U Provisions relating to requirements to provide information

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Division to provide information unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Division to provide information on the ground that the information might incriminate the person or make the person liable to a penalty.
- (3) **Information not admissible in other proceedings** However, any information provided by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in disciplinary, civil or criminal proceedings (except for proceedings under this Act).
- (4) **Further information** Further information obtained as a result of information provided in compliance with a requirement under this Division is not inadmissible on the ground—
 - (a) that the information had to be provided, or
 - (b) that the information might incriminate the person.

29V Review of penalty for offence

- (1) The Minister is to review the penalty imposed by section 29T(3) to determine

whether the level of the penalty remains valid and appropriate for securing the objectives of this Division.

- (2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of that section.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

[2] Section 50A

Insert after section 50—

50A Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

[3] Section 53 Review of Act

Omit the section.

Schedules 3-6 (Repealed)